

Exhibit C: Plaintiff's Closing Arguments

1 end of the form.

2 There's a place for the jury foreperson to sign and
3 date the form, and you're instructed to notify the Court's
4 security officer that you've reached a verdict.

5 That's long. I appreciate -- and it's dense. I
6 appreciate your attention.

7 I think what we should do now, so we have a fresh and
8 open mind for closing arguments, is we'll take a short recess,
9 10 or 15 minutes, just to stretch our legs, clear our heads.
10 We'll come back and hear from the lawyers, and then you'll
11 begin your deliberations. Thank you.

12 Oh. Still too early to talk about the case. We'll
13 start after we hear from the lawyers. Thank you.

14 **THE COURTROOM DEPUTY:** All rise for the jury, please.

15 (Jurors exit the courtroom at 10:27 a.m.)

16 **THE COURT:** Thank you. We'll see you in a few
17 minutes.

18 (Recess taken by the Court at 10:27 a.m.)

19 **THE COURTROOM DEPUTY:** All rise.

20 (Jurors enter the courtroom at 10:43 a.m.)

21 **THE COURT:** Please be seated.

22 **MR. STASIEWICZ:** Thank you, Your Honor.

23 **CLOSING ARGUMENT**

24 **BY MR. STASIEWICZ:**

25 Members of the jury, good morning. I'm glad I'm

1 finally able to address you after two weeks. I know you've had
2 to listen to a lot, and it's a great imposition on your time.
3 I can tell you that on behalf of my client and my co-counsel,
4 Doug Smith, and the key to the whole operation, Eric Largen, we
5 really appreciate the time and attention you've put into this
6 matter.

7 I know that parts of any court case can be not the
8 most exciting. Some of it can be confusing, and Doug told you
9 last Tuesday that at the end of the evidence, I would be
10 addressing you and putting some of the puzzle pieces together
11 of the different things that we've heard from all the different
12 witnesses, from the documents, from the depositions, and how
13 they all relate to what we're -- what brought the parties into
14 court on this matter.

15 So, essentially, in this case, we have three separate
16 claims that all relate to, essentially, the same set of facts.

17 We have the -- can the jury see that? All right.

18 We've got breach of contract, a breach of covenant of
19 good faith and fair dealing, and, of course, misappropriation
20 of trade secrets, which is what we've been talking about
21 directly the most.

22 Now, I think, as far as breach of contracts go,
23 that's something that you're probably generally familiar with,
24 although we'll get into the law a little bit later.

25 I think we all know that there's really no question

1 in this case that the defendants breached their agreements that
2 they were subject to, the agreements that bound them to keep
3 Larada's information -- confidential information confidential.
4 And that information included the AirAllé device, the device
5 that was the basis of the business they'd built to treat lice
6 clinics.

7 So in front of you, you'll see the different
8 contracts, and the breaches.

9 So we have Sheila Fassler, who's subject personally
10 on the 2010 lease agreement. So at all times that she had
11 access to the AirAllé device, she was covered by a lease
12 agreement on that personal provision.

13 PHS was always covered under one of the three
14 different agreements that it entered into over the course of
15 the events that happened in this case.

16 We have the 2010 agreement, followed by the 2013
17 agreement, and the 2015 agreement. There's confidentiality
18 provisions in all of those.

19 Separately, as you've already heard discussed, there
20 was a breach of contract claim for the non-payment of the usage
21 fees under the 2015 license agreements, and that's already been
22 resolved, and you're not going to be addressing that in your
23 deliberations.

24 John Fassler's contract situation is a little bit
25 different. He didn't have a contract that he was personally

1 liable on until the 2015 consulting agreement. So we'll
2 discuss how that relates to the facts of this case and his
3 liability a little bit later.

4 But as I go through a timeline of what we talked
5 about so far, I just want you to keep in mind what really
6 happened. Right? We've got, on multiple occasions, the
7 disclosure of the AirAllé device to engineers to create a
8 competing device.

9 We've got disclosure and we've got use. In the
10 context of trade secret misappropriation, we've already heard
11 that acquisition, disclosure, and use all -- all are sufficient
12 by themselves to constitute a breach -- a misappropriation of
13 trade secret. And so as we go through that timeline, I'm going
14 to try to point out so you remember where the disclosure and
15 use happens.

16 We've got four trade secrets, and we're going to get
17 into the specifics of how the facts that you've heard relate to
18 law and trade secrets a little bit later. But for now, I want
19 to get into actually what happened in this case. And I want to
20 make this point before we get into it.

21 If we could go to two slides further, please.

22 So I want to talk about what this case is not about
23 for a second. The case is not about whether any of the four
24 trade secrets are physically incorporated into the FloSonix
25 devices. The word is "use," not "incorporation." Use is

1 broad. Use in research and development is use. So that's not
2 what we're looking at here.

3 What we're looking at is the disclosure of the
4 devices given to PHS. Sheila and John Fassler have access to
5 it through the context -- through their work at PHS. Sheila is
6 owner. John is national medical director.

7 And then the disclosure of that information to Kevin
8 Dahlquist and Enventys Partners. The disclosure, by itself,
9 supports our damages theory. But, of course, there's more than
10 just disclosure here. There's disclosure and a continuing
11 repeated use of these trade secrets.

12 And we'll get into all the details about it, but
13 that's what the case is about. Whether a certain component or
14 a certain combination of components is found in this machine
15 doesn't affect our claim for misappropriation of trade secrets.

16 So with that said, let's recap what we heard, because
17 we heard from a lot of different people. And I had the
18 timeline in front of me the whole time, so I know what happened
19 when, but you don't have that benefit, and so that's what we
20 want to go through with you right now.

21 So you know that we founded Larada in 2006. And
22 Larada was, of course, founded to commercialize an invention
23 that had already been proven from the University of Utah, a
24 treatment for hair lice -- head lice. I'll get it right one
25 day.

1 Now, you've heard, you know, heated air can kill ice.
2 But getting that product to market in the way that John Beck
3 talked about, with the reliability, the durability, dealing
4 with all the issues, getting the power draw to work on a 15-amp
5 circuit and deliver those parameters and deliver them
6 consistently, that took years of work. It took a lot of
7 engineers, and it took a lot of money and expenses.

8 It was the whole point Larada was founded. Larada is
9 not GE. It's not a company that has millions of, you know,
10 different projects going on in their research division. This
11 was the one thing they had going on when they started.

12 So that development continued from 2007 into 2013.

13 Now, we know that the device was introduced in 2010,
14 but those refinements that kept going on. There's software
15 refinements. Those are the things that contributed to the
16 durability and reliability of the machine, that made it
17 valuable, that made it something that people like the
18 defendants wanted to build a business on.

19 So let's go forward.

20 And so that's what happens. At the very end of
21 November 20 -- of 2010, Sheila Fassler enters into a lease
22 agreement for the then-LouseBuster device with Larada. She
23 signs it personally and on behalf of PHS, and she's obligated
24 to keep it secret. They're just mobile at this point. PHS has
25 just one -- you know, they're just taking it on the road. But

1 it doesn't take long before they have a physical location,
2 based on the success of the device.

3 Go forward.

4 And here you see Exhibit 81, and that call-out at the
5 bottom is the personal guaranty by Sheila that she understands
6 to not disclose confidential trade information.

7 From 2010 to 2013, not much happens, other than
8 Sheila's business built on the AirAllé continues to grow.

9 In 2013, PHS enters into a new agreement, the rental
10 agreement. And then --

11 Moving forward.

12 -- once again, you see that we have language that
13 covers the proprietary information, including the devices.

14 Going forward.

15 And then things -- where things really start
16 happening in this case in September 2014, because now, for the
17 first time, John Fassler emails Kevin Dahlquist, and tells him
18 that he wants a replacement device for what they've been using.

19 The testimony is that there was some thought that
20 Larada was going to go out of business. Well, we have PHS had
21 signed agreements in 2013, and 2015. In 2014, at this moment,
22 they're claiming that that's what they believe.

23 And so they meet with Kevin and tell him, "For
24 reasons I will not go into, I believe Larada Sciences is close
25 to going out of business." That's what they tell him.

1 Kevin doesn't know. Kevin is -- you met him. He's
2 somebody who's engaged in his work. He likes working on
3 projects. You heard him also say that he was never told that
4 Sheila or PHS, or later John, were not allowed by contract to
5 share that information.

6 We also heard how Kevin needed new tools to measure
7 the AirAllé device. Even though he works in product design,
8 the tools he had on hand weren't sufficient.

9 Next, please.

10 He needs a pitot tube measurement to capture the
11 rates of 50 meters a second and higher than we expect to see.
12 Those are pricier, but they're a good investment for this
13 critical number to your product. And the Fasslers, on behalf
14 of PHS, pay for that. That's followed by the presentation in
15 December of -- well, we can skip to the presentation, but...

16 Go forward a couple, please. One more. Thank you.

17 That's the presentation, December 31, 2014. The only
18 other product on the market that they can benchmark against is
19 the one they're contractually obligated not to share with Kevin
20 Dahlquist. That's all they've got. That's the only thing they
21 can look at. Kevin said, "You can't go to Walmart and buy a
22 LouseBuster."

23 Go back a couple, please.

24 And that's what results, in January of 2015, this,
25 the first test data regarding the AirAllé. We have good

1 evidence that the Larada device was actually inspected,
2 measured, and specs were taken.

3 Shortly after this, the project drops for a while.

4 And if that's all that ever happened, I doubt we'd ever be
5 here, because we'd never know anything about -- there'd be no
6 FloSonix device, and we never would have known this happened.

7 Forward, please.

8 But instead, right at the same time as those
9 measurements are being taken, the Fasslers join the advisory
10 board, at the invitation of Larada. And they get closer to
11 Larada's internal discussions and what's going on with the
12 shape of the business.

13 And over the course of the next several months, they
14 continue to have the ear of management, and it results in John
15 Fassler, who is already the national medical director of PHS,
16 joining as national medical director of Larada. That's when he
17 enters into his contract.

18 Now, the language that we're focusing on here is a
19 little bit different. Here, "consultant agrees" -- and the
20 consultant is John Fassler -- "that he will not use or permit
21 the use of company's confidential information in any manner or
22 for any purpose not expressly set forth in this agreement; and
23 that he'll hold such confidential information in confidence and
24 protect it from unauthorized use and disclosure and will not
25 disclose such confidential information to any third parties."

1 And we know that he's going to permit the use, at
2 least, if he doesn't use it himself. And he's not going to
3 protect the confidential information from unauthorized use and
4 disclosure.

5 Shortly, about a month after that, Larada -- PHS
6 enters into the license agreement. Sheila, on behalf of PHS,
7 enters into seven different agreements, all the confidentiality
8 provisions that she initialed every page of. And we've covered
9 these, and I'm not going to read it all to you, but they
10 prevent divulging the information, copying the information,
11 reverse engineering it, or duplicating it.

12 Then, once again, there's a period of not much
13 activity, but we hear some testimony about the 2.0 coming out.
14 And shortly after a meeting about the status of the 2.0, Sheila
15 Fassler goes back to Kevin Dahlquist and forwards the
16 presentation about the AirAllé 2.0 to him. That's the
17 beginning of the real phase of beginning the FloSonix
18 development process in earnest. It really started in 2014, but
19 the big work is starting to be done now in 2016.

20 So there's the presentation, and we're moving on, and
21 by August 29, 2016, Kevin is talking about reskinning actual
22 AirAllé units. He talks about two different paths that they
23 were talking about going down. I don't know how Kevin thought
24 they were going to get their hands on our devices, but that's
25 something he was working on at that time, the line enclosure

1 around the actual gusts inside the AirAllé.

2 And then what we know, shortly thereafter, firstly,
3 that the device is on TV, shown functionally, the 2.0 device;
4 and so, even though it never made it to market, it's shown that
5 it's got potential and that Larada is really working on it.

6 Next, please.

7 And then in September of 2016, we have the real
8 unquestionable evidence that the AirAllé has been disclosed.
9 It's been given to Kevin Dahlquist. He opens it up, and he
10 takes photos of it. And we'll look at that a little bit later
11 in the timeline. But that's the point in the timeline -- we'll
12 get to the exhibit in a moment, but that's where we know --
13 we've got the ruler next to it. He's talking about what he's
14 learning from the inside of the AirAllé components.

15 Next, please.

16 By November, Kevin Dahlquist is measuring five
17 different devices, all provided to PHS, to get consistent
18 temperature readings. Those are the airspeeds. Those are the
19 temperatures that he's reading. This is, again, November 18,
20 2016.

21 Moving on, please.

22 In December 2016, Sheila is opening new clinics and
23 remodeling clinics that she has; right? They spend money in
24 that remodeling, and right around the same time --

25 Next, please. Next.

1 And the month later, Sheila tells Claire that PHS
2 won't pay usage fees.

3 Next, please.

4 We've looked at 211 a lot. In 211 -- we don't need
5 to read it again, but I want to point out that on the same day
6 the first AirAllé subject is listed on the data collected for
7 the clinical results comparison study with John Fassler's name
8 on it as medical director of PHS comparing the AirAllé class 1
9 medical device, the predicate device, versus the FloSonix
10 device.

11 Forward, please.

12 At the same time, Sheila's still communicating with
13 Kevin Dahlquist about development.

14 And then by February 14th, before the termination
15 comes, John Fassler buys the first Flying Pig. Now, he says he
16 did it without remembering anything that Kevin Dahlquist told
17 him. You're in the position to evaluate credibility of the
18 witnesses.

19 By February 28, 2017, we have the first FloSonix test
20 subject in that study. We already had the Flying Pig show up.
21 Sheila put it on somebody's head. It has back pressure issues,
22 and its noise -- has a lot of noise, but it seems like it might
23 be something that's going to work. Great; they've got the
24 backup plan in place. Nothing more needs to be done.

25 By May 4, 2017, FloSonix LLC is founded.

1 Which is very much out of order on this slide that we
2 put together yesterday.

3 We're still in March of 2017. That's when the
4 termination letter comes.

5 And then moving on, we're going to look at -- on the
6 same day -- well, several days later, we'll have the first
7 email, 162, where we have Kevin telling Sheila that the heads
8 he's designing to use with the Flying Pig, because the
9 attachments that come with the Flying Pig aren't good enough
10 for lice treatment, it's going to take him a little bit longer
11 to get those made.

12 And so in the interim, what they're going to use is
13 the copies made from the actual head of the AirAllé device,
14 using the process that Kevin talked about, and being able to
15 use the Larada tips that they still had access to on the new
16 devices that they were developing.

17 Next, please.

18 By March 20th -- next.

19 Kevin is taking thermal imaging of the way the air
20 flow comes out of the Larada head. That's information that he
21 could only get with access directly to the AirAllé machine.
22 And even if he had access to it, he needed to take further
23 steps to understand the thermal aspects of the heat inside the
24 head and the way the air flow comes out.

25 Next, please.

1 Then on August 9, 2017, we have him asking for even
2 more thermal imaging. He wants to do thermal imaging to view
3 flow characteristics, pressure within the head which indicates
4 how restricted the head and cones is, how close the heated air
5 gets to the scalp, and how effective the whole system is at
6 dehydrating.

7 And then he's going to propose the cobalt chloride
8 tests that we'll talk about in a second.

9 And he's still talking about using the PHS heads at
10 the same time. "I like this plan because it allows you to use
11 the cast Larada heads in the interim, as well as the new heads
12 when they're ready."

13 Next, please.

14 Around the same time, Kevin's also saying that he
15 doesn't exactly understand what's really the key to the AirAllé
16 device, but he wants to learn. He has no way of knowing how
17 thorough Larada was in their research. And he's going to learn
18 it from this machine. Maybe they were like, okay. That's good
19 enough. Maybe the exact pressure, temp and flow, the critical
20 components for success of the system, we don't really know,
21 yet. So he's going to find out.

22 But Larada knew. Because Larada had actually put in
23 the work. Larada had worked for years. Larada followed an
24 actual design process that was worried about how things might
25 work, how things could go wrong, how it was going to look when

1 the FDA came calling and if they hadn't done their homework.
2 And that's what's embodied in that device: Years and years of
3 that work. Every selection that was made and put in those
4 components in that machine was done with a view to that.

5 Kevin's going to learn it, but he's going to need an
6 even better thermal imager than he, who works and has all these
7 gadgets, had access to. And, again, it's the defendants who
8 were going to buy it for him.

9 Next, please.

10 Sheila says, "Go ahead and order whatever you need to
11 test and demonstrate those values."

12 Next, please.

13 So Kevin's explaining that all testing is relative.
14 We're trying to assess any difference of an effectiveness
15 between the two head types rather than absolute numbers. We're
16 saying is this better, worse or equal to that?

17 And this is important because I've talked about
18 relative testing before, but what I'm saying is they've got no
19 way of knowing whether their machine works on lice unless they
20 compare it to what they already know works. They don't do
21 clinical trials. They just throw it into the clinic and see if
22 somebody still has lice after they're done. And on top of
23 that, they're using dimethicone before and after they do the
24 treatment. So the actual efficacy of the machine themselves,
25 they have no idea of that.

1 So instead, Kevin proposes using the Larada head and
2 the FloSonix head next to each other to dry out those beads we
3 looked at, and we'll look at them again in a second. Say that
4 Larada had took 10 minutes to deliver an effective color
5 change. If our head can do it in 9 minutes, then it's a
6 significant, 10 percent improvement. That's the extent of
7 their research on efficacy of lice treatment.

8 Next, please.

9 As Kevin is working on that head, he's got
10 limitations on the electronics. And so he needs some help from
11 Enventys.

12 Now, you've heard about the electronics in the
13 AirAllé. They're complicated, because controlling this
14 temperature flow is very difficult.

15 So Kevin is struggling with it, and so he goes to
16 somebody who knows more about it. And that's when they move
17 the presentation, and this one still has the cast head from the
18 Larada --

19 Next, please.

20 -- obsolete blower head. This will change. But in
21 August of 2017, it still has it.

22 Next, please. Go ahead.

23 So now we're talking about that thermal imaging.
24 This is the higher quality thermal imager.

25 Now, on the next slide, we'll see exactly what he's

1 talking about. We're going to have the FloSonix head and the
2 Larada head next to each other, and we're going to compare how
3 the Larada dries things up, how the FloSonix dries things out,
4 what their internal pressures are, the temperatures that are
5 being applied, all the patterns and everything they can glean
6 from it. That's what they're learning here.

7 And this is the basis of all their testing. This is
8 the most obvious visual way to look at it. But everything they
9 do when they talk about the power draw, the flow rate, it's
10 all -- is it more or less? Can we go up and down here, and
11 then how do we compare it? They have no idea of any absolute
12 value of any of this without reference to our machine.

13 Next, please. Next. Next. Thank you. Keep it
14 moving. One more. Thanks.

15 September 27, 2017. All the machines are supposed to
16 be back, but we heard that Kevin still had a machine. And here
17 we see that, "understand that Sheila still has a Larada device.
18 So it might be a good idea to put it through more advanced
19 testing, as I did, with the new head if we're considering that
20 the 'to beat' benchmark."

21 Now, I'm not sure if that testing happened or if it
22 happened at this time. We know there's going to be further
23 disclosure of the machine, but I also want to highlight how
24 often in the process the thought occurs to defendants, or the
25 people working for them, that, "Oh, we have a design problem?"

1 I know where we can look to get an idea. We're going to look
2 in the machine again, and we're going to use the trade secrets
3 in it to find out what we can do in our development process."

4 Next, please.

5 That leads me to this power drive.

6 Keep going.

7 And that's what's going to lead to --

8 Keep going, please. Again.

9 -- yet another proposal for a retest. And the
10 discussion at this time, when these documents -- we've got
11 Enventys getting involved. And Ben Gatti is working on theé
12 electronics, but at the same time, he's noticing that the power
13 draw is very high. Because the FloSonix device, the Flying
14 Pig, and the original one blows way more air than the AirAllé,
15 and it's tripping breakers.

16 It works fine in the PHS clinics because they've
17 upgraded their breakers -- or their wall outlets, I should say.
18 Excuse me.

19 But if they want to have a device they can take to
20 market for other people, they're going to need it to work on a
21 standard 15-amp outlet.

22 And so because of that, the scope of the Enventys
23 project goes from just the electronics to now working on
24 sourcing a new motor. And that's going to start happening late
25 2017, and especially early 2018.

1 There's one other thing I really want to emphasize.

2 Next, please.

3 And that's the concept of what you learn by what's
4 absent. We know that you can look in this machine, and we know
5 that they didn't copy piece for piece all of its components.
6 They're too expensive. But we also know that they're learning
7 from what's not in there. And this is what Kevin is talking
8 about here in the second call-out. "I think, from a functional
9 perspective, the Larada is successful with none of these
10 features and a single sensor. No flow sensor, no PCB
11 interrupting the air flow." And he's going to echo that
12 concern in February of the same year -- or the next year.

13 Can we keep moving, please.

14 Again, in November of 2017, talking about how to do
15 control of regulating temperature. He's again advocating for
16 one sensor. That was the Larada solution, and it wasn't a
17 problem.

18 Next, please.

19 By January of 2018, Sheila is marketing the FloSonix
20 in Nashville.

21 Next, please.

22 And now we get to the motor selection process. Dana
23 Buffo, PHS employee, forwards the AirAllé specs to Jeremy Losaw
24 at Enventys. We saw that spreadsheet.

25 Next, please. Next.

1 There it is; right? There's all the information they
2 took from the Larada motor. They've got only the Flying Pig to
3 compare it to. And that's January 24, 2018.

4 Next.

5 On February 2, Dana Buffo reaches out to ebm-papst.
6 And she's looking for exactly the same motor that we have in
7 our machine. And she's asking questions about whether they
8 have something similar; right? That's what the discussion is
9 here.

10 That goes to -- that email goes to Jeremy, and Jeremy
11 forwards it to TJ. That's February 8, 2018, which is the same
12 day that TJ ends up picking the motor that ends up being used
13 in the gray top.

14 Next, please.

15 At the same time, Kevin's in China, also sourcing
16 motors. He's sad that TJ beats him to the punch. He's having
17 material tests done on the Larada hose.

18 Next, please. Keep going. Next.

19 And we know, again, here's disclosure. Once again,
20 the AirAllé device that they still have access to, almost a
21 year after termination, is at Enventys, being documented,
22 having parts noted, and that leads to the selection of the gray
23 top motor using the Larada specs.

24 Next, please. Next. Next.

25 Once again, as I've talked about, "the biggest hangup

1 is that there is no such flow sensor in the Larada, and that
2 has been a reliable performer for the last decade." So, again,
3 advocating for not including something in the design process
4 based on information.

5 Now we're a year into the process, and they're still
6 working on the machine that was so simple and that's so easy to
7 make.

8 Next.

9 Oh, sorry. In April of 2018, this is Jeremy Losaw,
10 for a change, talking about the Larada flow rate and how
11 Enventys has been working towards matching it. And they've
12 succeeded on that front; however, "it does not seem to be
13 working as well as we thought and requires a new direction."
14 Because there is more to the efficacy of the machine than the
15 flow rate and the temperature that comes out. And that's what
16 John Beck talked about.

17 Next, please.

18 Over and over, document after document. I'm not
19 going to go through them all, because we'd be here for days.
20 You see these references to using the Larada as a baseline, for
21 its wattage, talking about the RPMs of its motors, just how
22 it does things, what the noise level is.

23 September, October, November, January, February,
24 April, we have these references. Even in May of 2018, PHS is
25 still using Larada parts in its design process.

1 Next, please.

2 We've got TJ Root asking for pictures side by side of
3 the head and hose, and we know that that picture was taken for
4 him. He also says in this document, although it's not called
5 out, "If we want to try and put a Larada end on the 1.5 hose,
6 we could absolutely do that as a test." They still have all
7 these parts and all these elements of the Larada that they can
8 absolutely test whenever they run into a design obstacle.

9 Next, please.

10 We also -- this is testimony that Dahlquist, the
11 actor, put on during the deposition where we talked about how
12 the tips were made. You'll have access to that.

13 Next, please.

14 So we've talked on multiple occasions there about the
15 disclosure of how -- how this machine was provided by -- by PHS
16 to its outside partners. That's repeated disclosure. Any one
17 of them is a breach. PHS breached its license agreements. We
18 did everything we were supposed to do under those agreements,
19 provided them product that worked, that was the basis of their
20 business, and they disclosed. That's the breach. We'll get
21 into the law about that later.

22 Next, please. Next.

23 Sheila also breached. She was involved. She was the
24 one directing Kevin on a day-to-day basis. That's the nature
25 of -- she violated this covenant; and, again, Larada had done

1 everything that it was supposed to do under those agreements.

2 Next, please.

3 We talked about how John Fassler's contract is a
4 little bit different.

5 So we have his involvement in the testing of the
6 AirAllé device and the obvious -- that he knows from the
7 invoices that the device is being used. He does nothing to
8 stop the use of that confidential information, as he's
9 obligated to do under this confidentiality agreement. And he
10 uses the device in the same relative way as Kevin Dahlquist
11 does, to compare the AirAllé and FloSonix study, whether they,
12 side by side, work as well in the clinic. He's the national
13 medical director of PHS, and he puts his name on that study.

14 Next, please.

15 He also purchases the Flying Pig based on the data
16 that he got from Kevin Dahlquist.

17 So I want to talk a little bit now about trade
18 secrets. And before we talk about trade secrets, I just want
19 to remind you of a couple of things.

20 First of all, John Beck explained that the trade
21 secrets that he's talking about are combinations of different
22 portions of the machine. He said that the four kinds of
23 categories of trade secrets --

24 Next, please.

25 -- that he --

1 Next.

2 -- talked about were all part of an interdependent
3 system. He said that they worked in harmony.

4 And our damages theory, that we'll get to in a
5 moment, that's not based on how much of one trade secret or
6 another is worth something or something else. These four trade
7 secrets, in combination with some overlap, essentially make up
8 the entirety of the AirAllé device. You can't make any of
9 these trade secrets without making the device, and vice versa.
10 And that's why we got a good development process of the device.
11 There was no other device like this. We made it from scratch.

12 Just to explain a little bit about the categories of
13 trade secrets, John's first trade secret is entitled -- relates
14 to alpha parameters for volumetric flow rate and temperature.
15 But in his testimony, Mr. Abarca was speaking to it, that three
16 and four were subsets of one, and he explained that that wasn't
17 necessarily the case, and that one is more encompassing, it
18 includes more interaction, more interactivity between various
19 components to achieve the effect that the machine is used. So
20 it includes the entire machine and the systems as a whole, not
21 just subsets.

22 The issue is, you can't just turn on a tap -- you
23 can't turn on a switch and just have 55 CFM air and 59-degree
24 temperature air coming out. That's not how it works.

25 We talked about how hair dryers that you get have

1 much more variance because they don't need to do anything as
2 specific as stay at a level that kills lice but doesn't burn
3 the scalp over the course of the treatment. That's what all
4 that work went into, into maintaining that window. That's what
5 was talked about, the AirAllé, and just wasn't out there in any
6 other product.

7 Next, please.

8 So we talked about why the -- you know, we've got
9 this definition of trade secrets. At the top -- I'm not going
10 to read that all to you. The point is that it's very broad.
11 It can cover pretty much any kind of information as long as it
12 meets the requirements that are under it. And one of the key
13 ones, the most important one and the most confusing one, I
14 think, is the information is not generally known to or readily
15 ascertainable through proper means by another person who can
16 obtain an economic value from it.

17 Well, we know that everything in there is not readily
18 ascertainable because the only way that you can get your hands
19 on the AirAllé device is through a contract that says that
20 you're going to keep it confidential. And so you can't do
21 anything with that device without breaching that agreement, or
22 do anything that's going to be useful in accessing the trade
23 secrets in it. And, of course, that's what the defendants did
24 here.

25 Excuse me.

1 But we also know that it's not generally known.
2 There was no other machine like this on the market. They had
3 to build it from scratch. That's why it took them four years
4 to get it to market and another three years to finalize it.

5 Sure, the fact that any given component is -- is, you
6 know, off-the-shelf product has nothing to do with it. Coke is
7 a trade secret. The recipe for Coke is a trade secret. The
8 ingredients are right on the can. That doesn't tell you
9 everything you need to know about how to make it. Water is
10 generally known. Sugar is generally known. But how they work
11 together to make the product that dominates the world, that's a
12 trade secret.

13 And how these off-the-shelf products -- and some of
14 them are partially custom designed, some of the -- I think the
15 motor was modified, I think we heard from Mr. Beck. And, of
16 course, the software was custom. And how these all interact.
17 These had to be specific to those outputs that were found
18 already to be efficacious against lice treatment.

19 I'll tell you the best way to know that those things
20 aren't generally known or readily ascertainable is how many
21 times they had to go back to that machine, the defendants, in
22 their development process. If it was so easy to do this, and
23 all they had to do was buy the Flying Pig, then why did the
24 development process not stop on March 1, 2017? Why did they
25 have to go back and go back and go back? Because it was

1 difficult, in a way that they had no way of understanding
2 because they just assumed that they could take this and learn
3 everything there was to it.

4 Everybody who opens it up finds out, "Oh, I thought
5 this was just a hair dryer." No, it isn't. That's the value,
6 and that's what's not generally known about this machine and
7 what's not readily ascertainable.

8 Now, there's other requirements. We have to take
9 reasonable measures for secrecy for the machine.

10 Excuse me. Go back.

11 And there also has to be independent economic value
12 from being secret.

13 Forward, please.

14 So we talked about that. We're going to run through
15 Mr. Ward's testimony very briefly. We keep the spec documents
16 on a server. Only a few employees have access to it, even
17 though every Larada employee has a confidentiality agreement.
18 We know that the machine is only made available subject to
19 confidentiality agreements with clinic owners, with the
20 manufacturer, with -- you know, we've got agreements with the
21 IT people. All the spec documents say proprietary and
22 confidential, property of Larada Sciences. I don't think
23 there's really any question that Larada has taken measures to
24 keep their device secret.

25 Next, please.

1 We also have -- we skipped over the independent
2 economic value. And that should be obvious, too. This is the
3 basis of Larada's business, and it's the basis of PHS's
4 business, and it's the basis of 47 other clinics around the
5 country.

6 It's a unique, valuable device. We've built our
7 entire company around it. That's the value. And it's the
8 value that attracted the defendants to it in the first place.
9 And it's the value that they kept coming back to, and that's
10 why they kept referring to the machine in the design process.

11 Next, please. Next. Next. Next. Actually, back up
12 a bit. I'm sorry.

13 All right. So we've covered John Fassler's breach
14 already. We'll move through that.

15 We also have this breach of implied covenant of good
16 faith and fair dealing. I just want to deal with this briefly.
17 The judge explained in the jury instructions that, essentially,
18 you're -- this covers the purpose of the contract. If there's
19 a phrase -- in fact, for example, if the contract didn't say
20 you couldn't copy something and they copied the tips, that
21 would probably -- and other things obviously meant to protect
22 the information. If the words didn't quite cover it exactly,
23 that would be the implied -- that's the implied covenant. And
24 that's sort of just the way to cover those parts of the
25 contract that are not -- if you're dealing in good faith, if

1 they aren't exactly specified in the terms of the contract.

2 Next, please. Next.

3 Now, we talked about the existence of the trade
4 secret briefly. The interstate commerce issues has been
5 stipulated. The parties agree that it's an interstate
6 commerce.

7 And so next we have the actual activeness
8 appropriation, and we've talked about this before. It's
9 acquisition, use or disclosure. Acquisition, use or
10 disclosure. That's all it takes. It's an "or." It's not an
11 "and." If you disclose the trade secret, you're liable. We
12 heard Mr. Nelson say, just because you disclose something or
13 apply your trade secret doesn't mean you've caused any economic
14 damages to anybody.

15 That's not the law. The law is what Judge Shelby has
16 explained to you, and we're going to look at specific things
17 about damages in a moment.

18 Next, please.

19 So we also want to address briefly --

20 Next.

21 -- whether what was in the -- in the patents, or what
22 was in the medical articles, whether that constitutes readily
23 ascertainable -- sorry, that it's generally known in the
24 industry because it's in some published article or a patent or
25 in *The New York Times*.

1 Now, the general shape of the machine, that's not a
2 trade secret. So to say that everything about the device is a
3 trade secret is not exactly true. You can look at a picture of
4 it online. You can know it treats lice and it's got a motor in
5 it. You can kind of know that the tip kind of looks like that.
6 But that's what you can get from a picture.

7 What you can't get is all this stuff that they were
8 doing. You can't get thermal imaging online. And it's not in
9 any of the patents. It's not in any of the articles. You
10 don't know the schematics. You don't know any component. You
11 don't know whether a flow sensor is in there or not. You've
12 got some disclosure of the temperature. But, again, the
13 disclosure of any one part of the device publicly doesn't
14 invalidate that the combination of those parts is a trade
15 secret.

16 Again, everything -- pretty much everything -- every
17 part of a Coca-Cola thing is publicly known, or a Coca-Cola
18 can; right? You know what's in there on the ingredients, but
19 the combination is what makes it important.

20 And so even though there's publicly disclosed aspects
21 of the machine, the combination of everything else in there
22 that makes it -- makes it what it is, that's what creates the
23 trade secret protection.

24 Next, please.

25 That's No. 32 of the instruction that talks in

1 general about what I just explained about our compilations.
2 And you see at the bottom, "The public disclosure of one or
3 more of the parts of the compilation does not render the entire
4 trade secret readily ascertainable."

5 Next. Next. And next.

6 We talked about improper means. There are, in this
7 case, no proper means. Everything that happened was in breach
8 of the agreements. Even as national medical director of PHS,
9 John's early involvement at least was a breach from PHS, if not
10 for him personally.

11 Of course, it could mean other things, people who
12 hack into computers to download files, but that's not what this
13 case is about.

14 There are no proper means of applying the AirAllé
15 device. And there was no other benchmarking done of any other
16 device. Benchmarking's fine. If you have access to that
17 product legally, it's fine. It's not fine here. And that's
18 why we protected our device with contracts, because we had put
19 that work in and we knew that, in this situation, it would be
20 devastating to lose all that hard work.

21 Next, please.

22 So here's our unjust enrichment instruction, and it's
23 a little confusing; right? We understand concepts like pain
24 and suffering and need and understand lost profits, to some
25 extent. Unjust enrichment is a little bit different. There's

1 just differences in the remedies that contract law and trade
2 secret law provide. And part of the reason is for situations
3 like this, where some other remedy may not be the most
4 appropriate under the facts of the case.

5 And one of the things I want to direct you to on this
6 instruction is the last sentence, which says, "Regardless of
7 whether you find that Plaintiff itself suffered losses, if you
8 find that the Defendant benefited from using a trade secret
9 belonging to Plaintiff, then you should consider whether that
10 Defendant should pay the monetary value of those benefits to
11 Plaintiff."

12 That's what we're talking about. We're talking about
13 the benefit to PHS from using the trade secret, and you should
14 consider whether that Defendant should pay the monetary value
15 of those benefits to Plaintiff.

16 Next, please.

17 This is more about the damages. It's actually 47,
18 which is the instruction before 48, but I want to call out here
19 that you may consider, in awarding such actual damages, the
20 cost the defendant would have incurred in acquiring the same
21 information or trade secrets through its own experimentation or
22 through other lawful means. And we'll talk about the numbers
23 later, but that's what we're asking for. We're asking for the
24 costs they would have incurred, and the best estimate of that
25 is our costs. And that's the work Matt Germane put in to

1 explain our costs in developing the trade secret information.

2 Next, please.

3 Mr. Germane relied on unjust enrichment theories.

4 This is from the five different kinds of ways that the -- that
5 unjust enrichment can be calculated. It's a broad, again,
6 flexible concept in the law, again, to deal with different
7 situations, because the facts in every case are a little bit
8 different.

9 This case is pretty unusual. You don't hear a lot
10 about franchisees of McDonald's signing a contract and then
11 just taking all the stuff they get from McDonald's and
12 putting their own name on it, because McDonald's would come
13 down on them like a ton of bricks.

14 Unfortunately, Larada is not McDonald's, and it has
15 14 employees, and just dealt with COVID. So they have more
16 difficulty in bringing that kind of legal pressure on people to
17 enforce those rights. And for the most part, they don't have
18 to, because most of their clinic owners are happy to have the
19 device, and they grow along as Larada grows.

20 But in this case, we've had to resort to -- to
21 lawsuits to enforce our rights with regard to our information.

22 Next, please.

23 So we also heard from Matt Germane. He asked for --
24 he put a value on this device, \$1.95 million and some change.

25 He went through the R&D expenses and R&D wages.

1 There were some questions raised as to the accuracy of those
2 numbers, or how reliable those numbers can be.

3 And, again, if Larada was some kind of, you know,
4 like Lockheed Martin, and you don't know who's working on what
5 project and how long they've been working on it, it probably
6 would be really hard to rely on the testimony of one person
7 from ten years ago who's going to tell you.

8 But Randy Black was with the company for a long time.
9 He's the "RA" in Larada. And he knew everybody personally.
10 It's a small company. He was able to say who worked on what
11 R&D and who wasn't there, and there really wasn't much going on
12 in the early years aside from R&D. You couldn't go to market
13 without a product. We cut out as much of -- of anything that
14 we could that we found that wasn't -- that didn't seem like it
15 related directly to the R&D.

16 You recall Mr. Abarca asked whether the translation
17 into Norwegian had been included, and Mr. Germane pointed out
18 that it hadn't been. And we've also cross-referenced these
19 numbers against the payroll taxes to make sure those are
20 accurate and used the best information we can.

21 Now, going forward from 2009, we actually have better
22 backup in the documentation. But those early years, '07, '08,
23 that's where those payroll records are missing. And nobody
24 would know better than Randy. As Matt pointed out, even if
25 Matt was watching, he wouldn't be able to tell you what work

1 goes to patents, what work goes to trade secrets, without the
2 assistance of some engineer explaining that to him anyway.

3 I've also explained how, going forward from 2010,
4 once the device hits the market, how there's further
5 development work and that how that development work also
6 contributes to the value of the device; keeps it more reliable,
7 and makes it something that people are going to want to grow
8 their business with, the way that the Defendants grew PHS with.

9 So just to tie up trade secrets a little bit. You
10 know, we've got these four trade secrets. They'll be described
11 on your jury form. You don't have to -- you don't have to
12 decide which one is the most important or whether they all
13 exist. As long as there's one there, our damages figure stays
14 the same.

15 I want to discuss just briefly, again, the way that
16 we have these direct use of the machine, the relative testing
17 of the machine, copying of the parts, pictures of the
18 components, reaching out to suppliers, material tests on the
19 hose; everything they can learn that you can't learn from just
20 looking at the machine, and they try to extract from it.

21 Why did they not just copy it all the way? Well, we
22 heard there was some talk of just reskinning the existing
23 machines. But the real issue is that's expensive. Those parts
24 are expensive and complicated. And to recreate that is not
25 what they were looking for.

1 And that kind of brings me to one more issue that we
2 haven't addressed yet.

3 Next, please.

4 So we have what's called exemplary damages. And
5 "exemplary" can mean you did a great job. But I think, in this
6 context, it doesn't mean that. It means that you're making an
7 example of somebody; and, in this case, they may be awarded an
8 amount not more than two times the amount awarded for unjust
9 enrichment.

10 So you don't have to take our word for that unjust
11 enrichment figure. It's up to you to figure out what the
12 damages are and what the trade secret is worth. But we're
13 going to ask that whatever number you come up with, you take
14 that and double it, and there'll be another line for exemplary
15 damages when you look at the verdict form.

16 But to do that, you have to say that the
17 misappropriation was willful and malicious. And, as always, we
18 have an instruction to tell us what that means.

19 Next, please.

20 So here's the words I want to really direct your
21 attention to. "An act is willful if it's done voluntarily and
22 intentionally and with the specific intent to commit such an
23 act." And "the act is malicious if it's done with such gross
24 indifference to the rights of others as to amount to a willful
25 act done intentionally without just cause or excuse."

1 "Gross indifference to the rights of others."

2 Let's go back to 2009 and talk about the rights of
3 others.

4 There's no PHS without Larada. Sheila Fassler
5 incorporates PHS to use this device in her clinics. They open
6 in 2010. They got one device. They're mobile. But it's not
7 long before they have a permanent location. It's a good
8 machine.

9 Next, please.

10 And they've got a growth mindset. You heard it from
11 Sheila herself. They re-sign with Larada in 2013. They're
12 growing their clinic business. They're getting more machines.
13 And it's not long before PHS becomes one of their top clinics.
14 And that's a credit to the Fasslers. We have a lot of clinics.
15 Not all of them are the top clinics. Not everybody gets as big
16 as they did. And that's based on their work. Based on the
17 machine, too, but it's a credit to them. They know what
18 they're doing.

19 And that's 2013. They've re-signed. 2012 and 2014,
20 they're still in a growth mindset; right? That's when they're
21 getting close to Larada, joining the advisory board, knowing
22 what Larada is doing next, knowing what its plans are.

23 But at the same time, they're never telling Larada
24 that they're working with an engineer to measure the device, to
25 know how it works, to understand its output specs, to look for

1 a replacement.

2 John Fassler becomes the national medical director of
3 Larada. They sign new agreements in 2015, knowing that they've
4 already gone to an engineer to work with our devices.

5 Now, that growth mindset never went away. In
6 December 2016, January 2017 --

7 Next, please.

8 -- they're spending money for the new PHS clinic.
9 They're spending money on a new PHS clinic. They refit one and
10 they double -- I think, to double its size, and they're opening
11 up another one. \$30,000 for Charleston. \$15,000 for Raleigh.
12 That's \$45,000 over the course of two months that they invest
13 in the business.

14 And that's not enough. They're also going to take a
15 loan out to buy the building that they're in, in Charlotte.
16 And they're paying Kevin Dahlquist what Sheila called a nominal
17 amount.

18 And that's the moment where they decide where they're
19 going to save money is by cutting out Larada, or at least
20 getting a deal out of them. So she says to Claire, in that
21 email on February 1st, "I've had to delay paying my usage
22 fees."

23 Not asking, "Do you think it's okay?"

24 I'm telling you, "I'm not going to pay." Not because
25 the clinic is underwater, literally, or that there's a power

1 outage or there was some disaster. "I'm taking out a loan."

2 Growth mindset. "I'm going full steam ahead."

3 Because they know -- they already have the open
4 picture. They have the specs. They know, or they think, that
5 the Flying Pig is going to set them free. That's what they --
6 they're wrong. But they're wrong about a lot of things in this
7 case. They're wrong about that. They're wrong about their
8 ability to just stop paying Larada, which we found out, you
9 know, when the breach -- the breach of contract that was
10 already settled. That's been resolved.

11 They're wrong about the Flying Pig being the easy
12 solution. But they didn't know that yet. Instead, they
13 decided they were going to play hardball and try to get a deal
14 out of Larada. Claire called their bluff and said, just,
15 "You've got to pay. You've got back fees. You've got to pay."

16 Before there's any termination letter, they've got
17 the Flying Pig on the way. So almost a month before the
18 termination letter, the Flying Pig is ordered. They know
19 what's coming.

20 And then you heard testimony that says, "Well, it was
21 the home treatment kit. I was worried about that. It was
22 going to eat into my business," the business that they'd worked
23 so hard to build. It's understandable. You're a business
24 owner. You're worried about new products.

25 But you also heard Claire say she heard that

1 feedback. Larada worked with them to allay those concerns and
2 was also, you know, still working on the 2.0 device because
3 that was important to clinic owners as well.

4 And here's the most important part. If you think
5 that a home treatment device sold on Amazon is going to eat
6 into your clinic business, then you don't turn around and
7 develop a new clinic -- device that you're going to start
8 selling to everybody else. That's not how it works. You'd
9 make a home treatment kit. You'd go do something else. They
10 made a new clinic device. They don't think that the home
11 treatment kit is going to eat into their business.

12 And that's the plan all along. 2016, November,
13 Dahlquist says, "Oh, yeah, we were going to reskin those
14 machines. We went a different path." The Flying Pig path, but
15 still, a competing device.

16 In March of 2017, Dahlquist says, "We were ready to
17 do on the scale of hundreds." In March. They don't even know
18 if it works yet.

19 And then, by the time we're going to Enventys --
20 here's what he says. "I can't get -- I'm not a factory. I
21 need Enventys to get on the scale of thousands."

22 Kevin has to go to China to source motors for
23 production. They're signing \$100,000 production deals with
24 Enventys. You don't go into production to sell this stuff all
25 over the country before you even know it works, before it's got

1 FDA clearance, if you don't have understanding -- if that's not
2 what -- sorry -- if you think that the home treatment kit is
3 really going to eat into your business.

4 This is just growth mindset. They don't care. What
5 Larada's got doesn't matter, and they have no respect for it.
6 They opened it up and found it might be a little bit tougher,
7 and that's evidenced by how long it's taking them to get their
8 machine. But they had a functioning prototype -- well, they
9 had the Flying Pig -- in weeks. It had a lot of problems, but
10 that's why they kept working on it. And they were able to
11 market within a year, while it took Larada, with all its
12 engineers, four, and they had nothing to work from. They
13 worked from scratch.

14 So they think that that's -- you know, they're in
15 negotiation again. It took a machine that took at least
16 \$2 million -- almost \$2 million to make, and now they want
17 their expert to tell you, you know, we should get that for
18 \$100,000. They're negotiating in bad faith again. That's --
19 you know, \$100,000 or less, if you feel like it. That's what
20 we heard yesterday.

21 We know how much work went into this, and how much
22 value it has to them, both in building their business in the
23 first place, and then copying what they learned from it.

24 And I think this says it all on 204. "We have been
25 working on this project since 2014." We're excited. We are

1 finally coming down the finish line.

2 That's always been the plan. They have no respect
3 for the work that Larada put in developing this product. They
4 have no respect for the contracts they signed. They're
5 sophisticated businesspeople. They run a very successful
6 business. They're going to market. Their intention is to
7 compete with us. They're going to compete now. They are
8 competing now, they will compete in the future, and that's why
9 we've come to you to resolve this issue.

10 Next, please.

11 So this is the verdict form. We've seen this --
12 there's only the one. And so it starts with the breach of
13 license agreements against Pediatric Hair Solutions. We know
14 that Pediatric Hair Solutions' employees were also involved in
15 this process. Dana Buffo is forwarding parts. She's involved
16 in a lot of this stuff well after 2015.

17 Sheila, of course, on behalf of PHS, involved in
18 almost every phase of the prospect, making parts available,
19 making devices available, holding on to the AirAllé device
20 after -- after the agreement's terminated.

21 The problem is, for us, the contract damages are --
22 have limitations on them. And in the facts of this case, what
23 we're asking for is damages on the license agreement of \$1.
24 That's the nominal damages that you heard the judge explain.

25 Of course, as we'll talk about in trade secrets, if

1 we're going to base our trade secret claim on breach of some
2 duty, some duty of confidentiality, you necessarily have to
3 have these breach claims.

4 Then the next one is the duty of good faith and fair
5 dealing against PHS, and then we talked about that already.
6 That's in those cases where you're worried that -- you think
7 that they violated the spirit of the contract without any
8 particular term. So if you feel like that's the case, then you
9 should answer that yes.

10 Next, please.

11 And you can also award \$1 on that one.

12 Similarly, with the lease agreement from Sheila
13 Fassler, we just talked about her involvement in every phase of
14 it. Her personal liability, I think it's clear, that's a clear
15 yes. And, again, we're asking for \$1.

16 And for Dr. Fassler, again, we talked about, he's got
17 that later date contract. So the evidence on breach has to be
18 based on stuff he does after that. But we talked about his
19 use, his failure to stop the use, and all those actions; his
20 acquisition of the Flying Pig, and his involvement in the test
21 study that validates the AirAllé device versus the FloSonix.

22 Next.

23 This is where we are asking for our unjust enrichment
24 damages, under misappropriation of trade secrets claim. And
25 all you have to say is have we proven that a trade secret has

1 been misappropriated by that Defendant. And we believe, for
2 all four, the answer is yes. And that for all four, the
3 compensatory damages are that number that Matt Germane
4 calculated.

5 Again, it's up to you to figure out what that number
6 is, based on all the evidence in this case, but we've supported
7 that with the documents that we have.

8 And then the next question for each defendant is was
9 that misappropriation willful and malicious. And that's what I
10 just talked about. You know what really happened here. You
11 know what the plan was. This was willful and it was malicious
12 in the sense that those terms are used with regards to
13 exemplary damages. So we ask that you answer that question
14 yes.

15 If you answer that question yes, you're not required
16 to award exemplary damages or do them in the amount that I've
17 put there, but the maximum you can do is -- whatever number you
18 put in the compensatory damages line, the maximum you can do is
19 twice that number. And that's what I've put here. It's a
20 little -- you know, compensatory was a little less than 2.
21 Exemplary is a little less than 4. And that's the same entries
22 for each of these Defendants.

23 Next, please.

24 Now, all this -- all this activity was hidden from
25 Larada until -- until it filed suit. Couldn't have made the

1 case without the documents we've shown you and taken a lot of
2 time to painstakingly go through. I'm not in the room when
3 Kevin Dahlquist was working with the machine. I'm not on the
4 calls. I don't know what's going on with the meetings.

5 I've showed you what I can prove: repeated use,
6 repeated disclosure. Any of it supports our damages theory.
7 And we ask that you deliver the findings that I've requested on
8 the verdict form.

9 Again, I thank you for your time, and I appreciate
10 your attention to this case. Thank you.

11 **THE COURT:** That was a little over an hour. And for
12 our court reporter, it was two hours. So we, for sure, need to
13 take a break for her and let her stretch her fingers.

14 Why don't we all stretch our legs for a few minutes,
15 then we'll come back. Let's make it a relatively brief recess.
16 I think we want to get through closing before lunch so that
17 you'll have a chance to work while you're eating today.

18 So let's try to come back in about ten minutes.
19 Thank you.

20 **THE COURTROOM DEPUTY:** All rise for the jury, please.
21 (Jurors exit the courtroom at 11:51 a.m.)

22 **THE COURT:** We'll see you in a few minutes. Thank
23 you.

24 (Recess taken by the Court at 11:51 a.m.)

25 **THE COURTROOM DEPUTY:** All rise for the jury please.

1 (Jurors enter the courtroom at 12:08 p.m.)

2 **THE COURTROOM DEPUTY:** Please be seated.

3 **THE COURT:** One moment, Mr. Marshall.

4 Nobody asked me to say this, and I didn't tell
5 anybody that I was going to say this, and I don't need to say
6 this, I'm sure, but I just want to stress I've been giving
7 Mr. Stasiewicz a lot of grief during the trial about how fast
8 he talks. It's not a commentary about his case or clients or
9 something else. It's just good-natured ribbing, you
10 understand. It's not intended to relay anything to you about
11 the case or what you should be doing as jurors, of course.

12 Mr. Marshall.

13 **MR. MARSHALL:** Thank you, Your Honor.

14 CLOSING ARGUMENT

15 **BY MR. MARSHALL:**

16 Eight days ago I said, "A flying pig would set my
17 clients free." I got some funny looks, not too surprising.
18 Then we talked a little bit afterwards throughout my opening
19 about what that means.

20 But also on that day my friend and colleague on the
21 other side here said, among others things, "The evidence will
22 show that PHS -- PHS used all of the AirAllé to create a
23 competing device."

24 And we've heard my other friend here say "The
25 evidence has shown that there was continued and repeated use of